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Appeal No. 88-4110

MAR 29 1990

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ON BRIEF

BOARD OF PATENT APPEALS  
& INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte Ole K. Nilssen

Application for Patent filed July 28, 1986, Serial  
No. 06/889,746. Track Lighting System For 277 Volt Power Line.

Ole K. Nilssen pro se.

Primary Examiner - David K. Moore.  
Examiner - M. Razavi.

Before Thomas, Hairston and Cardillo, Examiners-in-Chief.

Hairston, Examiner-in-Chief.

This is an appeal from the final rejection of claims 1  
through 19<sup>1</sup>/, all of the claims in this application.

The disclosed invention relates to a track-lighting  
system that is powered by a relatively low-magnitude, high-  
frequency voltage.

Claim 1 is illustrative of the claimed invention, and it  
reads as follows:

1. A track lighting system comprising:

a source providing a relatively high-magnitude low-  
frequency AC voltage to a pair of power line terminals;

1. It appears that claims in this application may overlap and may  
be in conflict with claims found in appellant's application  
serial no. 889,171, which is also currently before this  
Board. As the examiner has not addressed this point, we  
will not discuss it any further in this decision.

voltage conditioning means connected with the power line terminals and operative to provide a relatively low-magnitude high-frequency AC voltage at a pair of track conductors in a power track, the power track having a receptacle slot operable to receive and hold track lighting units having socket terminals, thereby to permit electrical contact between the socket terminals and the track conductors; and

track lighting units: i) having socket terminals, ii) adapted by way of these socket terminals to be inserted into and held by the power track's receptacle slot, thereby to establish electrical contact between the socket terminals and the track conductors, and iii) adapted to be properly powered by the relatively low-magnitude high-frequency AC voltage.

The references relied on by the examiner are:

Kivari	2,587,169	Feb. 26, 1952
Neumann et al. (Neumann)	3,496,518	Feb. 17, 1970
Spira et al. (Spira)	4,207,498	June 10, 1980
Nilssen	4,506,318	Mar. 19, 1985

Claims 1, 4 through 9, 12 and 14 through 19 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 1 through 19 stand rejected under 35 U.S.C. 103 as being unpatentable over Spira in view of Kivari and Neumann.

Claims 1 through 19<sup>2/</sup> stand rejected under 35 U.S.C. 103 as being unpatentable over Nilssen in view of Kivari and Neumann.

Reference is made to the briefs and the answer for the respective positions of the appellant and the examiner.

#### OPINION

We have carefully considered the entire record before us, and we will reverse the 35 U.S.C. 112, second paragraph rejection of claims 1, 4 through 9, 12 and 14 through 19 because we agree with the appellant that the claims are definite. With respect to the 35 U.S.C. 103 rejection of claims 1 through 19, we will sustain this rejection because we agree with the examiner that the applied references provide ample evidence of obviousness.

Based upon the examiner's comments in the answer, it appears that he is concerned that the lack of more detailed structure in the claims renders them indefinite. Although the claims on appeal do not set forth some structure in as much detail as appellant's application disclosure, the claims do,

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2. On page 4 of the answer, claims 1 through 29 are listed under this rejection. This is obviously a mistake since only claims 1 through 19 are in this application.

however, define the metes and bounds of the claimed invention with a reasonable degree of precision and particularity when read in light of that same application disclosure. See In re Moore, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971). Even if the examiner is concerned that the lack of more detailed language describing specific structure affects the breadth of the claims, a rejection of the claims under the second paragraph of 35 U.S.C. 112 is still not proper because the breadth of the claims is not equated to indefiniteness of the claims. The 35 U.S.C. 112, second paragraph rejection of claims 1, 4 through 9, 12 and 14 through 19 is reversed.

In the 35 U.S.C. 103 rejection of claims 1 through 19, we note that appellant never specifically argues the patentability of any of the claims. As no separate patentability arguments were presented for each of the independent and dependent claims, all of the claims will fall together. See In re Wood, 582 F.2d 638, 199 USPQ 137 (CCPA 1978).

The references to Spira and Nilssen both disclose lighting systems wherein an ordinary electric utility power line provides line voltage at a first set of distribution conductors. Both references disclose rectifier networks and high-frequency inverters for producing high-frequency output voltages. Nilssen's lighting means is an incandescent lamp, and Spira at column 9, lines 30 through 34 indicates that incandescent lamps can be powered by his illumination control system. Spira at column 7, lines 42 through 47 indicates that the output voltage level can be controlled by "delaying the application of the firing signal to thyristors 52 and 53 and thus varying the duty cycle of the inverter." At column 5, lines 57 through 60, Nilssen recognizes that "the RMS power provided to the incandescent lamp can be controlled over a wide range simply by controlling the timing of the inverter trigger point." Based upon this recognition of control over the output voltage levels

from the inverters in both of the references, we find that it would have been obvious to one of ordinary skill in the art to operate the lamps with a wide variety of high-frequency output voltages, including a "relatively low-magnitude high-frequency AC voltage." The reference to Kivari provides evidence to the effect that an incandescent lamp can be operated at relatively low AC voltages. The additional reference to Neumann discloses that it is known to use a plurality of incandescent lamps in a track-lighting system. But for the frequency of the operating voltage, claim 1 would read directly on Neumann. In any event, we find that it would have been manifestly obvious to one of ordinary skill in the art to arrange the incandescent lamps of both Nilssen and Spira in a track-lighting format as taught by Neumann. Track lighting is merely one of the many ways in which incandescent lamps can be mounted and powered. Appellant's arguments in the concluding paragraph on page 7 of the reply brief are not very convincing since the same disadvantages attributed to the applied references apply as well to the claimed track-lighting system that is powered by a frequency converter.

In the affidavits submitted by Messrs. Giorgis, Jr. and Fiene, the probative value of each affiant setting forth "an obvious application" of Spira's teachings is found to be negligible since both affidavits merely recite conclusions, rather than facts. Both affiants admit that they have never seen appellant's application and claims. The lack of nexus between the claimed subject matter and the conclusions reached in the affidavits renders both affidavits insufficient to prove that which is discussed therein. See In re Brandstadter, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973). Of the four references applied by the examiner in the prior art rejection of the claims on appeal, only Spira is discussed in the affidavits. Affidavits fail in their purpose if the claimed invention has not been compared with all of the closest prior art. See In re DeBlauwe, 736 F.2d 699, 222 USPQ 191 (Fed. Cir. 1984).

With respect to appellant's arguments concerning the examiner's qualifications to examine this application, the "hypothetical person," the appellant's qualifications listed in the affidavit, and the standard to apply in combining references, appellant's attention is directed to In re Nilssen, 851 F.2d 1401, 7 USPQ2d 1500 (Fed. Cir. 1988).

DECISION


The decision of the examiner rejecting claims 1, 4 through 9, 12 and 14 through 19 under 35 U.S.C. 112, second paragraph is reversed.

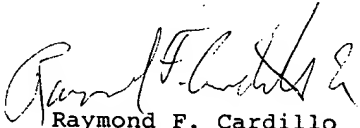
The decision of the examiner rejecting claims 1 through 19 under 35 U.S.C. 103 is affirmed. Accordingly, the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a). See notice of final rules, 54 F.R. 29548 (July 13, 1989), 1105 O.G. 5 (August 1, 1989).

AFFIRMED

  
James D. Thomas  
Examiner-in-Chief

  
Kenneth W. Hairston  
Examiner-in-Chief

  
Raymond F. Cardillo  
Examiner-in-Chief

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